SUPREME COURT, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971
No. 71-5799

Richard Robinson,

Petitioner

v.

Grier Davis, Donald R. Mitchell, Howard Kester, Carole Tyler, John Davis, Elizabeth Wilson, Chief of Police Schwantes, Peter Post, Jack Wood, Chris Maney, Morry Stanton, Bob Blair, Jerry McDade, Donald White, and Lee Gaunt,

Respondents

****

On Petition for Writ of Certiorari
to the United States Court of Appeals
For the Fourth Circuit

****

BRIEF FOR RESPONDENTS IN OPPOSITION

****

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OPINION BELOW

The opinion delivered in the court below is reported at 447 F.2d 753 (1971), and is appended to the Petition for a Writ of Certiorari. The opinion was delivered on September 8, 1971, Opinion No. 14,531, Petition for Rehearing En Banc denied on October 28, 1971.

QUESTION PRESENTED

Whether the action of college officials in requesting the presence of certain students at a hearing and subsequently questioning them constituted State Action under 42 U.S.C. 1983 when

security officers of the College who were also part-time police officers of the Town participated.

STATEMENT OF THE CASE

Petitioner instituted an action on January 16, 1970, seeking a declaratory judgment that the actions of officials of Montreat-Anderson College, a privately owned junior college, in an inquiry conducted the night of January 14, 1970, violated the Civil Rights Acts, and further seeking injunctive and monetary relief.

Montreat-Anderson College (hereafter "College") is a Presbyterian institution, and is neither owned nor operated by the Mountain Retreat Association (hereafter "Association"). They are both Presbyterian institutions but are separate legal entities with separate Boards of Trustees, with each holding legal title to its own property.

At the time of the filing of the Complaint by the petitioner, no disciplinary action had been taken by the college officials. Subsequently, the petitioner was asked not to return for the second semester but was allowed to complete and receive credit for the first semester's work (A-41). The term "not asked to return" does not mean expelled (A-9).

At the time this action was commenced, the Association provided all the Town's municipal services, as the Town had insufficient funds. At that time the Town had no paid employees.

During the fall session, an agent of the State Bureau of Investigation conferred with Peter Post, the College Security Officer, and informed him unequivocally that a number of students of the college were engaged in the use and sale of narcotic drugs. Post subsequently relayed this information to Donald Mitchell, Dean of the College, and an investigation ensued (A-34 and 35). The Administrative Committee of the College passed another resolution admonishing students against the use of drugs; the Honor Court of the College requested assistance from the Administrative Committee. From information supplied by the State Bureau of Investigation and confidential informants as to the names (petitioner among them) of students engaged in using, buying and selling drugs on campus, it was evident that drug usage on campus was alarming. Consequently, Dean Mitchell called a meeting of the Administrative Committee for the night of January 14, 1970, for a more extensive probe into the drug activities. A list of students to be called before the Committee was composed by Dean Mitchell and Security Officer Post. Petitioner, Robinson, who reputedly had been selling drugs to other students at the College, was named on the list. The Respondent Security Officers Wood, Maney and Stanton, who were fellow students on campus and engaged in such tasks as firing the furnaces and maintaining the boilers for the College, were furnished a sub-list and requested to notify the students named thereon to appear before the Administrative Committee in a classroom on campus and if a student refused to come, such refusal was to be reported to the Dean of the College Some of the students on the list received notification of the meeting from students other than those acting as security officers.

The security officers adhered to their instructions; no mention of arrest was made, the room where students waited was presided over by a faculty member, and the College nurse who looked after the girls (A-8) (A-39 and 40). The students called before the Committee were neither arrested nor did they think or believe they were under arrest.(A-47) The petitioner remained in the hearing room for about twenty minutes (A-40), each student was questioned by the various members of the Committee (A-40) and Respondent Post sat with the Committee and assisted in the questioning. As a result of the entire investigation into the drug problem on the campus, including the hearing before the Administrative Committee, twelve students were disciplined by the College, six of whom were asked not to return for the second semester. These six were allowed to take their examinations and complete and receive credit for the semester's work. Two of the six testified that they had no desire to return and had made other arrangements before they were asked not to return.

The Town of Montreat is governed by an elected Board of Town Commissioners and a Mayor, not connected in any significant manner with the College. Many private citizens not connected with the College hold legal title to their residential properties. Legal title is held by the College and by the Association to the land utilized by each, respectively, and each is a separate legal entity with a separate Board of Trustees. At the time complained of, the Association and the Town had entered into a contract whereby the Association provided the municipal services for the Town, as the Town had been incorporated for a short

period of time and had insufficient funds. The areas of operation and lines of authority of the Town and College are plainly distinguishable and separable.

ARGUMENT

The decision below is not in conflict with the decision of any other Court of Appeals on the same matter and, therefore, the Petition should be denied.

This case requires analysis of the concept of "state action", and only if state action is involved can it be determined if petitioner was deprived of a federally protected right.

In Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), Mr. Justice Clark observed that "only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." (Id. 365 U.S. 722, 6 L.Ed 2d at 50)[1]

The petitioner argued that the various Courts of Appeal have pursued two general

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1. The Burton Court found that the restaurant which had refused to serve a Negro was operated as an integral part of a public building erected and maintained with public funds by an agency of the state to serve a public purpose.

approaches to the problem of analyzing the significant extent of state involvement of which Mr. Justice Clark spoke in Burton. That the first is "joint enterprise" and the second approach is that the state action must be involved in the activity which causes the injury.

First: It appears that all of the cases cited by the petitioner for the first approach involved racial discrimination.

In the instant case, the Court below stated that appellant argued first that the circumstances in this case reflect a significant involvement of the State similar to that in Burton, this argument being predicated on the premise that the Town and the College were a joint enterprise (A-11 and 12). The petitioner overlooks the fact that it was the Association which was providing municipal services under contract with the Town. The College had no connection with this. The Town is a separate legal entity governed by a Board of Town Commissioners, the Board not being connected with the College in any manner.

The record plainly shows that the principal actor in the investigation of drug usage on campus was the Academic Dean who is also Vice-President of the College and who has been assigned many duties of the President by the Board of Trustees of the College, but who has no connection with or authority over the Town or of the Association. Other members of the Administrative Committee of which Dean Mitchell was Chairman, were faculty members with no connection with the Town or the Association with the exception of Schwantes whose only

participation appears to be that he was present at the meeting.

The College is located on its own property and it pays for its own services, none of which are furnished by the Town, nor is the College operated with public funds. The elements of control over the private party and involvement in and direct responsibility for its actions, as in the Burton case, are lacking here (A-13).

Second: The decision in Powe v. Miles, 407 F.2d 73 (2d Cir., 1968) takes the position that a private institution is not subject to the Fourteenth Amendment unless the state action pertains to the activity that caused the injury. The question was whether a private university, under some circumstances, is to be held to the same standards as a public university. Judge Friendly's opinion for the court ruled that it is not. That court found no state action in the disciplinary measures taken against students enrolled in the private college.

The court below stated that Powe stands for the proposition that the actions of an official in one of his capacities can constitute "state action" while his moves in another capacity cannot be so characterized. (A-16).[2]

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2. The case of Watkins v. Oaklawn Jockey Club, 183 F.2d 440 (8th Cir., 1950) is comparable to the instant case. Watkins was an action against the sheriff, a deputy and the president of a race track, plaintiff contending he was unlawfully ejected under color of state law. There

In the instant case the Security Officers who notified the students to appear for the hearing were fellow students on a small campus (A-47). Security officers were instructed to ask the students to appear in a certain classroom in Gaither Hall, a college facility; these officers were further directed to merely request that the students appear; that, in the event any student refused to come, such refusal was to be reported to the Dean of the College. Some of the students on the list received notification of the meeting from students other than those acting as security officers (A-7).

The record clearly reflects the adherence of the security officers to their instructions (A-7). No mention of arrest was made nor were the students held against their will (A-47).

Two classrooms in Gaither Hall were used for the meeting, one of which was occupied by the Administrative Committee and designated as the hearing room and the other as a waiting room. The Director of Athletics and the Nurse for the College were in charge of the waiting room. Some of the students asked if they could leave prior to appearing before the Committee; they were advised that they were free to do so,

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plaintiff was not told he was under arrest, and the deputy, in uniform with holstered gun, did not take him to jail. The defendants there, as here, were not performing any duty imposed upon them by the state nor did they make any pretense that they were acting under state law. In Griffin v. Maryland, 378 U.S. 130 (1964), the petitioners were told they were under arrest.

but that such action would be reported to the Dean and that it might conceivably result in disciplinary action against them (A-8). In Browns v. Mitchell, 409 F 2d 593 (10th Cir. 1969), a review of disciplinary action taken by a private university, students were suspended when they conducted a sit-in when the Chancellor advised them their demands could not be met. The court held that the suspension of the students did not constitute action taken under color of state law.

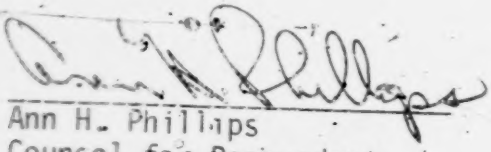
This was a hearing by College representatives and students. The defendants in the instant case were not performing any duty imposed upon them by State law nor did they make any "pretense" that they were acting under state law; they were working for the College (A-17).

The Watkins court held that the sheriff and deputy sheriff although officially dressed, were working for the race track at the time complained of, and not under color of state law. The defendant security officers were acting within the ambit of their private employment and duties as part-time security officers for the College (A-18). The court below found no basis for holding that the action of the College officials in requesting the presence of certain students at the hearing and in questioning them constituted state action.

CONCLUSION

For the reasons stated above, Respondents say that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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